

No. 15443

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT LEE RAMSEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

I.

Statement of Jurisdiction.

This is an appeal from an Order of the United States District Court for the Southern District of California denying the Motion of appellant to modify, vacate or set aside the sentence and judgment of that Court entered March 9, 1954, committing appellant to the custody of the Attorney General for seven and one-half years for violation of Section 2114, Title 18, United States Code.

Jurisdiction of the District Court is founded upon Section 3231, Title 18, United States Code. Petition to vacate the original judgment was submitted by appellant under the provisions of Section 2255, Title 28, United States Code. Jurisdiction of the Court of Appeals to entertain this matter may be found under the provisions of Section 1291, Title 28, United States Code, and Rules 37 and 39 of the Federal Rules of Criminal Procedure.

II.

Statement of the Case.

A. Procedural Sequence Giving Rise to This Appeal.

On March 9, 1954, Robert Lee Ramsey and his co-defendant, Robert J. Nelson (not represented on this appeal), parole violators from the State of California, were convicted, despite pleas of "not guilty," for violating Title 18, United States Code, Section 2114, and were committed by the Honorable Ben Harrison to the custody of the Attorney General for a period of seven and one-half years. Subsequently, on the 25th of October, 1956, Robert L. Ramsey presented to the Honorable Ben Harrison, Judge of the United States District Court, Southern District of California, a Motion under Title 28, Section 2255, United States Code, urging the Court to vacate the judgment. The ground petitioner alleged was absence of jurisdiction to impose sentence. Judge Harrison, on October 31, 1956, entered an Order denying petitioner's Motion. This Order was supplemented by Findings of Fact, Conclusions of Law and Judgment of Denial entered by His Honor on November 14, 1956. Petitioner Ramsey then filed, on the 23rd of November, 1956, his Notice of Appeal, and moved to proceed *in forma pauperis*. This latter Motion was honored by Judge Harrison.

B. Summary of Operational Facts.

Appellant, in the month of March, 1950, was convicted in a California State court for the crime of robbery. He was sentenced to San Quentin for a term of from five years to life. After serving more than three years, appellant was paroled under the supervision of the State of California Parole authorities. On February 5, 1954,

defendant was again arrested by California State authorities. On February 9, 1954, he was taken into the custody of federal authorities from the State of California. Thereafter, on March 9, 1954, he was found guilty by a jury of the crime of robbery of a post office, in violation of Section 2114, Title 18, United States Code, and was thereupon sentenced to the custody of the Attorney General for seven and one-half years. Thereafter, the State of California placed a detainer against appellant as a parole violator.

III.

Argument.

A. The District Court Had Jurisdiction of the Subject Matter.

The gist of appellant's position seems to be that he was a parole violator of the State of California at the time he committed the federal crime, and that this conferred upon him some sort of immunity from federal prosecution. He concludes that the federal District Court did not have jurisdiction to impose the sentence.

Appellant was tried by the Honorable Ben Harrison, United States District Judge for the Southern District of California, after his plea of not guilty for alleged violation of Section 2114, Title 18, United States Code [Clk. Tr. pp. 6, 7], a post office robbery occurring in Los Angeles County, California, on January 13, 1954. The jury returned a guilty verdict as to him and a co-defendant, Robert J. Nelson (see *Nelson v. United States*, 217 F. 2d 469 (9 Cir., 1955)).

District Courts of the United States have original and exclusive jurisdiction of offenses against the laws of the United States. Section 3231, Title 18, United States Code.

Prosecution of federal crimes shall be had in the District in which the offense was committed. Rule 18, Federal Rules of Criminal Procedure.

Thus the trial court had jurisdiction of the subject matter of this crime committed within its District.

B. The Court Had Jurisdiction of Appellant's Person.

Appellant came into federal custody February 9, 1954 [Clk. Tr. p. 14]. He pleaded not guilty to the federal charge [Clk. Tr. p. 7]. He was convicted by a jury and sentenced on March 9, 1954, to seven and one-half years in the custody of the Attorney General [Clk. Tr. p. 14]. No indication is given us at any point that the appellant or the State of California objected to the District Court's exercise of jurisdiction over appellant's person.

This Honorable Court has treated of a similar, but, on its facts, a more aggravated, case in the following language:

“However, in this case the state authorities did in fact surrender the appellant to the federal authorities and thus in effect gave the federal court jurisdiction to try the appellant and to render judgment of imprisonment against him and to execute that judgment. The personal presence of a defendant before a District Court gives that court complete jurisdiction over him, regardless of how his presence was secured,”

Stamphill v. Johnston, 136 F. 2d 291, 292 (9 Cir., 1943), cert. den. 320 U. S. 766, 88 L. Ed. 457, 64 S. Ct. 70.

Objection to jurisdiction of the person may be waived by defendant. A failure to challenge jurisdiction of the

person on appearance is equivalent to consent. *Chapman v. Scott*, 10 F. 2d 156 (D. C. Conn., 1925), *affd.* 10 F. 2d 690 (2 Cir., 1926), *cert. den.* 270 U. S. 657, 70 L. Ed. 784, 46 S. Ct. 354; *Ford v. United States*, 273 U. S. 593-606, 71 L. Ed. 793, 47 S. Ct. 531.

By going to trial on a plea of not guilty without objection to the jurisdiction of the court over his person, a defendant waives such objection even under Rule 12(b)(2) of the Federal Rules of Criminal Procedure. *Pon v. United States*, 168 F. 2d 373 (1 Cir., 1948); *United States v. Rosenberg*, 195 F. 2d 583 (2 Cir., 1952), *cert. den.* 344 U. S. 838, 97 L. Ed. 652, 73 S. Ct. 20.

“It is clear that federal authorities had actual possession of defendant during his trial in the federal court. Jurisdiction resulted from that possession and it follows that any question concerning the rightfulness of what was done in the exercise of that jurisdiction is merely a question of comity.”

Stamphill v. Johnston, supra, at p. 292.

C. Appellant Is Without Standing to Raise the Question of Comity.

The theory of comity, raised in appellant's Brief, is not applicable to the instant situation since there is no evidence or indication that California authorities have asserted any claim inconsistent with the action of federal authorities. On the contrary, it appears that State authorities surrendered appellant to the United States for prosecution, and have placed a detainer to obtain custody upon completion of his federal sentence, thereby impliedly assenting thereto.

“Here, there was no showing that the California officials, with authority in the premises, did not consent to the United States taking petitioner into custody and trying, sentencing, and imprisoning him for the Federal offenses. Since public officials are presumed not to act unlawfully, it must be presumed, in the absence of a showing to the contrary, that California voluntarily surrendered custody of the petitioner to the federal authorities. Moreover, the fact that the California authorities merely filed a detainer request and did not demand surrender of petitioner for violation of his parole until the expiration of the Federal sentences indicates that California consented to Federal custody.”

Rosenthal v. Hunter, 164 F. 2d 949, 950 (10 Cir., 1947).

Appellant himself has no standing to raise the comity question, as is indicated by this Honorable Court in the following language:

“As pointed out by the Supreme Court in *Ponzi v. Fessenden*, 258 U. S. 254, 42 S. Ct. 309, 66 L. Ed. 607, 22 A. L. R. 879, *supra*, the arrangement made between the two sovereigns, the state and federal governments, does not concern the defendant who has violated the laws of each sovereignty and he cannot in his own right demand priority for the judgment of either. See to the same effect, *Banks v. O’Grady*, 8 Cir., 113 F. 2d 926.”

Stamphill v. Johnston, *supra*, at 292.

IV.

Conclusion.

Appellee respectfully submits to this Honorable Court:

1. That the District Court had jurisdiction over both subject matter and appellant's person;
2. That California impliedly agreed to appellant's present incarceration and has indicated its consent thereto by filing a detainer to be effective upon his release from federal custody;
3. That there is no conflict between the federal and state authorities which would involve the principle of comity;
4. That appellant's state parole status does not insulate him from federal prosecution for crimes committed while on parole;
5. That appellant's appeal is completely without merit and should be denied, and that the order appealed from should be affirmed.

Respectfully submitted,

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